



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Profile School District

Complainant

v.

Profile Education Association/NEA-NH

Respondent

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Case No: E-0036-1

Decision No. 2007-047

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Profile School District (the "District") filed an unfair labor practice complaint on March 12, 2007 alleging that the Profile Education Association/NEA-New Hampshire, (the "Association") committed unfair labor practices in violation of RSA 273-A:5 II (f) by seeking to arbitrate non-arbitrable matters. The underlying facts involve the election in January, 2006 by two teachers to take early retirement pursuant to the parties' collective bargaining agreement. It appears to be undisputed that the School Board approved the early retirement requests and also that approximately six months later the involved teachers provided notice that they were rescinding their retirement election. The Association grieved the District's refusal to allow the requested rescission and in February, 2007 demanded binding grievance arbitration.

As remedies, the District requests that the PELRB: 1) Find that the grievances are non-arbitrable; and 2) Order the Association to permanently cease and desist from its actions.

The Association filed its answer denying the District's charge on March 26, 2007. The Association contends that the District's refusal to accept the teachers' letters of rescission involves portions of the parties' collective bargaining agreement relating to teacher nonrenewal, resignation, and early retirement and that the present dispute is a proper subject of arbitration.

The Association requests that the PELRB: 1) Dismiss the complaint; 2) Order the District to proceed to arbitration; and 3) Order such further relief as is just and proper.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB on April 3, 2007.

PARTICIPATING REPRESENTATIVES

For the District: Jay C. Boynton, Esq.

For the Association: James F. Allmendinger, Esq.

ISSUE PRESENTED FOR BOARD REVIEW

Did the Association violate RSA 273-A:5 II (f) by demanding arbitration of the District's refusal to accept the letters of rescission?

WITNESSES

For the District:

1. Patrick C. Low, Ed.S., Superintendent SAU 35
2. Richard Larcom, Principal, Profile Junior Senior High School
3. Michale Kelley, Assistant Principal, Profile Junior Senior High School

For the Association:

1. Jay Tolman, NEA-NH, UniServ Director
2. Dr. Jude Lepine, association president
3. Jeff Rennell, involved teacher
4. John Clark, involved teacher
5. Sharon Mellaci, teacher
6. Paul Williams, grievance chair

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the District - the Association has no objection to the District's exhibits identified on the District's pre-hearing worksheet and listed below:

1. Grievance demand for arbitration, filed 3/9/07
2. Grievants' unconditional early retirement letters 1/10/06, 1/15/06
3. School Board Vote 1/24/06
4. Teacher's conditional early retirement letter 9/7/04

5. School Board Vote 9/23/04
6. Teaching Contracts 6/18/05, 5/15/06, 5/16/07
7. Letters 9/7/04, 5/2/06
8. CBA expiring 8/31/09

For the Association – the Association submitted the following exhibits at the pre-hearing:

1. Rennell letter 1/15/06
2. Clark letter 1/10/06
3. Rennell letter 5/2/06
4. Clark letter 5/2/06
5. Superintendent letter Eckerman 6/29/06 to Rennell
6. Superintendent letter Eckerman 6/29/06 to Clark
7. Tolman NEA-NH letter 7/11/06
8. Principal Larcom letter 7/17/06
9. Tolman NEA-NH letter 7/19/06
10. Superintendent Low letter 8/11/06
11. Tolman NEA-NH letter 8/16/06
12. Superintendent Low email 8/31/06
13. Clark letter 8/30/06
14. Rennell letter 8/30/06
15. Clark letter 8/31/06
16. Rennell letter 8/31/06
17. CBA expiring 8/31/06
18. Mellaci letter 3/29/05
19. Staff Nominations 05-06 school year

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be three hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least five days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before April 12, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB on or before April 13, 2007.

2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

3. As discussed at the pre-hearing conference, the District shall file any motion seeking to stay or hold in abeyance arbitration proceedings at issue during the pendency of this matter on or before April 6, 2007. The Association shall file any responsive pleading on or before April 10, 2007.

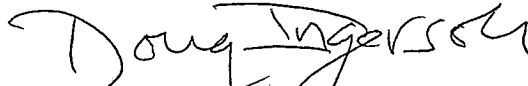
4. This matter is scheduled for a hearing on the merits on April 13, 2007 at 1:30 p.m. Based upon the pre-hearing it appears likely that the parties will reach stipulations on all or some of the involved facts. In the event the parties are able to stipulate as to all facts, that stipulation shall be filed on or before April 13, 2007. Additionally, the parties shall notify the PELRB at that time whether they wish to appear on April 13, 2007 to argue the case in place of submitting briefs or whether they wish to submit their argument by briefs. The deadline for the filing of any briefs in this case shall be April 20, 2007.

5. Unless otherwise ordered by virtue of the provisions of this pre-hearing order, or as a result of the filing of any subsequent motion, or for other good cause shown, an evidentiary hearing between the parties will be held on

April 13, 2007 @ 1:30 p.m.

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.
April 3, 2007.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:
Jay C. Boynton, Esq.
James F. Allmendinger, Esq.